(K) 1943

File No. Power-Ale-Petrol II/43

Legal Department-
B BRANCH

Subject:- Rules and Notifications under the Bombay Powers Alcohol and Petroleum Act, 1942.

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File No. Power-Ale-Petrol II/43

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Office of the R.L.A.

Notification under section 8(3) at page 141 ante.- A revised draft notification under section 8(3) is appended. Before the notification under section 8(3) prescribing the proportion of power alcohol in an admixture of petroleum is issued, it will be necessary to issue a notification under sub-section (2) of section 8 prohibiting the sale of petroleum unless it is admixed in the prescribed manner and proportion with power alcohol etc. For although sale of petrol is prohibited under sub-section (1) of section 8 unless it is admixed with power alcohol, the sale petroleum is not so-prohibited under sub-section (2) unless a notification is published to that effect by the Provincial Government. A draft notification for the purpose is appended.

2. Notitification under section 9 at page 141 ante.- Section 9 provides for the grant of a license by the prescribed authority for mixing power alcohol with petrol or petroleum. "Prescribed" under the definition in section 3(6) means prescribed by or under the Act. Under section 23(2) (d) power is given to the Provincial Government to make rules to provide for the authority to grant a license under section 9. It is therefore necessary to make a rule. Requisite provision has been made in rule 10(1) of the revised rules. No. notification is necessary under section 9.

3. Notification under sections 13(1), 14 and 16.- The draft notifications at pages 141-142, 142-143 and 143-144 as amended are in order.

4. Draft rules under section 23.- A draft notification embodying the revised draft rules is sent herewith. The following remarks are made:

5. Rule 2.- (a) The definitions have been rearranged alphabetically.

(b) "Straight petrol" is the same as "petrol" within the definition of section 3(3) read with section 3(4) of the Act. The definition and use of the expression are therefore unnecessary.

(c) "Power alcohol after issue from the distillery" is defined as "power alcohol denatured in the prescribed manner". The definition is inept since it is as long as the expression defined; it is also unnecessary as the expression defined does not appear anywhere in the rules.

(d) The last definition in revised clause (k) has been recast with a view to precision.

(e) It has been proposed to prescribe by notification under section 8(3) the proportion of power alcohol in an admixture of petroleum with power alcohol. If this is to be permitted, it will be necessary to refer to the admixture of power alcohol with petroleum in the definition of mixing depot, mixing licensee and mixture also.

6. R.D. draft rules 3 and 4 are unnecessary and have been deleted. Section 24 already provides that the provisions of the Bombay Abkari Act, 1878, so far as they are not inconsistent with the provisions of the Act or of any rules made thereunder shall apply to power alcohol

7. R.D. draft rule 5 also is unnecessary . The provisions contained in rule 5(1)(a) and (c) and rule 5(2) can be imposed by way of conditions in the license to be granted ~~e~~ for the manufacture of power ~~alcohol~~ alcohol under the provisions of the Bombay Abkari Act. The provision contained in rule 5(1)(b) is a mere repetition of section 3(5) and is unnecessary.

8. R.D.Draft rule 6.- Same remarks as for rule 5. See section 5 of the Act.

9. Rules 7 to 9 and 11 to 14 of the R.D. draft have been renumbered as rules 3 to 5 and 6 to 9 , respectively, in the revised draft.

10. R.D. draft rule 9 (revised rule 5).- Section 6 provides that power alcohol destined for admixture etc. shall be denatured with denaturants of such ~~pa~~ specification as may be prescribed. "Prescribed" means under the definition

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in section 3(b) prescribed by or under the Act. It would therefore be necessary to prescribe the specification of the denaturants in rule 5 of the revised draft and this cannot be left to be prescribed by the Commissioner in consultation with the Director of Industries from time to time. The Act does not provide for delegation of the powers of the Government under section 23 to make rules. The specification should therefore be settled by the Commissioner in consultation with the Director of Industries and then specified in the Appendix appended to the rules.

11. R.D. draft rule 10.- Section 7 provides that power alcohol manufactured in or imported into the Province of Bombay and destined for d admixture etc. shall be sold to the Provincial Government at such prices may be fixed in this behalf. Here again it will be necessary for Government to fix the price as there is no provision for the delegation of any powers of Government under the a Act. No rule is necessary for the purpose under section 23. The rule has therefore been omitted. It would be sufficient to fix the price by an executive order, or if considered necessary for the information of the public by means of a notification published in the Bombay Government Gazette.

12. R.D. draft rule 12 (Revised draft rule 7) appears to fall with the scope of sections 4 and 5 of the Petroleum Act. ~~1934~~ 1934. But it may be retained if no objection is raised by the chief Inspector of Explosives.

13. R.D. draft rules 13 and 14. - Same remark as for rule 12.

14. R.D. rules 15 to 26 have been renumbered as 10 to 21 a in the revised draft.

15. R.D. draft rule 15(1)(Revised rule 10(1)).- It is presumed the word "etc." in the R.D. draft rule 15 refers to fixtures other than thanks and buildings in a mixing depot. This has been made clear.
~~Sub~~-rule (3) in the R.D. draft has been made a proviso to sub-rule (2).

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It appears from R.D. draft rule 17 that licenses granted for mixing power alcohol with petrol are to remain in force for one year only. A new sub-rule (3) has therefore been added to revised rule 10.

16 R.D. draft rule 27 is recast and renumbered as rule 22 in the revised draft.

17 R.D. rules 28 to 34 have been renumbered as rules 23 to 29 respectively in the revised draft.

18 R.D. draft rule 30 (Revised rule 25). Forms appended to the rules have been serially numbered according to the order in which they are referred to in the rules. Form 13 has therefore been renumbered as Form 9.

19 R.D. draft rule 23 (Revised rule 27) .- R.D. draft rule 32 provides for an appeal to the Chief Chemist, Central Revenue Control Laboratory, Agricultural Research Institute, New Delhi. It is presumed that this Government has obtained or will obtain the consent of the Central Government to the appointment of the Chief Chemist as the appellate authority before this rule is promulgated

20 R.D. draft rule 33 (Revised rule 28).- Section 23 (2)(i) requires that the fees that may be charged for testing power alcohol, denaturants and the mixtures shall be prescribed in rules. Reference therefore to the Chemical Examiner's fee as fixed by the Government has been deleted. The fees so fixed should be specified in the rule itself

21 R.D. rules 35 to 37 have been renumbered as rules 30 to 32 in the revised draft.

22 R.D. draft rule 35(Revised rule 30).- Sub-rule (b) of R.D. rule 35 refers to "straight petrol" for purposes mentioned in section 25(1) . This appears to be a mistake. section 25(1) saves the use or sale of petrol not admixed with power alcohol for the requirements of His Majesty's naval, military and air forces. Presumably it is intended to refer to purposes other than that of affording motive power for a motor

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vehicle, notified by Government under clause (2) of section 23. Sub-rule (b) of revised rule 30 has been corrected accordingly.

The concluding portion of sub-rule (b) of R.D. rule 2 35 has been split up into two separate sub-rules.

25. R.D. rule 38 prescribes the powers of the Commissioner. The opening paragraph merely refers to the powers of the Commissioner under the Act, a rules and the order of the Government. Clause (1) refers to the maintenance of weights, measures and instruments by distillers and mixing licensees and the persons to dim inspect them. Section 23(2)(r) requires that the measures, wt weights and instruments to be maintained by license holders and the procedure for testing shall be prescribed by Government by rules. The proposed provision in clause (1) is therefore ultra vires. Clause (1) further provides that the Commissioner shall standardise these weights and measures. There is no authority for this in the Act. Even the Provincial Government has no power to standardise weights. It is a Central subject under entry 51. in List I in the Seventh Schedule to the Government of India Act, 1935.

Clause (2) of a R.D. rule 38 provides for the returns to be submitted and the records and books to be maintained, the manner in which they are to be verified and the authority to whom they are to be submitted. This power is conferred under section 23(2)(n) on the Provincial Government and cannot be delegated to the Commissioner.

Similarly the power proposed to be conferred under clause (3) on the Commissioner to dispose of articles confiscated is ultra vires. Under section 23(2)(p) this power vests in the - Government.

Clause (4) gives powers to the Commissioner to prescribe forms of licences, certificates and permits. The forms of licenses can be prescribed by Government only erunder section 23(2)(j) and the forms of certificates also by Government under section 23(2)(l) and (r).

Clause (5) gives power to the Commissioner to prescribe the

functions of Excise Officers. This power also is vested in the Government under section 23(2)(e). The rule has therefore been deleted.

24. R.D. draft rule 39 (revised rule 33).- The rules do not provide for making seizure of any article. The words or these rules" have therefore been deleted.

25. R.D. draft rules 40 to 43 have been renumbered as revised rules 34 to 37, respectively.

26. R.D. draft rule 40(revised draft rule34).- A saving clause is added in order to preclude the Collector hearing such appeals as lie under the rules to the Government Chemical Examiner of Chief Chemist.

27. R.D. draft rule 42 (revised rule 36).- R.D. rule 42 provides for the holder of a license contravening the terms of the license being punished with a fine of Rs. 500/- in addition to the suspension or cancellation of his license. Section 15 provides for a penalty for a contravention or section 9. In other respects a contravention of a condition of a license itself can be penalised by a sus suspension or cancellation of the license itself. Revised rule 36 therefore provides for contravention of rules only.

28. An Appendix providing for specifications of denaturants of power alco-hol to be attached to the rules themselves is appended.

29. Form 2. - Conditions 2 and 3 do not appear to be necessary. The duty under section 3 of the Motor Spirit (Duties) Act, 1917, can be recovered as provided therein without any provision being made in this license. Similarly, it is not necessary o provided in the license that any measures of control which the Central Government may impose to secure that duty shall be unaffected. The two conditions have therefore been deleted.

30 The other Forms as slightly amended are in order.

31 The rules have been given suitable marginal notes.

32 The R.D. draft notification under clause (2) of section 25 is not in order. That clause merely gives the Provincial Government the power to notify a purpose other than that of affording motive power for a motor vehicle as a purpose, the sale

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of petrol to be used for which is saved by section 25 from the provisionsof the Act. A revised draft notification for the purpose is appended.

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Remembrancer of Legal Affairs.

U.R. to H.D.No. 1135, dated the 15th February 1943.

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DRAFT NOTIFICATION
Revenue Department.

Bombay Castle. 1943.

No. :- In exercise of the powers conferred by clause (2) of section 25 of the Bombay Power, Alcohol and Petroleum Act, 1942 (Bom. XXIII of 1942), the Government of Bombay is pleased to notify the purposes of teaching at schools and colleges and doing research at laboratories and chemical works as the purposes within the meaning of the said clause (2) of section 25.

By order of the Government of Bombay.

Secretary to Government.

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